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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Toll Free Service

Access Codes

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CC Docket No. 95-155

NSD File No. L-98-85

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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Dated: July 1, 1998

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SUMMARY

Serious issues about the structure of the current system for administration of toll-free (formerly "800") numbers, including ownership and operation of the toll-free database itself, have now remained unsettled for nearly a decade. MCI strongly disagrees with the limited recommendation of the North American Numbering Council, and believes that the Commission must act promptly to resolve the competitive, legal and policy problems arising from the continued role of the RBOCs in competitively vital toll-free numbering administration.

The *Third Report and Order* in this proceeding concluded last October that toll-free number database administration, as structured since its inception in 1993, is "inconsistent with" the requirements of Section 251 of the Telecommunications Act of 1996, and directed NANC to designate "an appropriate administrator for the toll-free database." The NANC, however, has now recommended that the Commission reverse its findings in the *Third Report and Order*, but without any substantive review of the actual ownership or operation of the toll-free database system beyond the narrow issue of the new corporate structure of Bellcore, the parent of database management agent DSMI. The NANC's view that Bellcore's sale to a holding company removes any concern about neutrality was based on an incomplete analysis of the issue, since under this rule even an RBOC could serve as the North American Numbering Plan Administrator if the RBOC were purchased by an "neutral" entity like General Motors. That is incorrect.

More importantly, the issue of DSMI's neutrality is dwarfed by the impropriety of the current, RBOC-dominated structure of toll-free numbering administration. The RBOCs, especially SBC, are intimately involved in ownership and operation of the network database, and supporting systems, used for administration of toll-free numbers. These relationships clearly

contravene the command of Section 251(e) for an “impartial” administrator of, and “equitable” access to, toll-free numbers, and cannot remain under Section 271 if the RBOCs desire to satisfy the so-called “competitive checklist” for entry into the interLATA marketplace.

The consequences of the RBOCs’ direct role in the toll-free database are inflated costs, unaccountable administration, anticompetitive conduct and, at the very least, a plain appearance of partiality in permitting the RBOCs to continue to control numbering resources that are essential to MCI and other rivals. Among other things, the RBOCs have overcharged MCI for database services by at least \$14 million in just a three-year period, have improperly gained access to competitively sensitive IXC utilization and other toll-free number information stored in the database, and have financed the database with a lavish management style that reportedly includes unaudited boondoggles for Board of Directors meetings in London, Hawaii and other exotic “business” locations. These unacceptable consequences—effectively putting the foxes in charge of the toll-free industry’s henhouse—demand Commission action now. If, as the Commission decided last Fall, the National Exchange Carrier Association was not qualified to serve as a neutral billing and collection agent for NANPA without significant changes to its structure, composition and management, then the current RBOC-controlled SMT and SMS/800 structure for toll-free number administration cannot survive even cursory scrutiny.

Consequently, the Commission should take immediate action to reform the structure of toll-free database administration. First, the Commission should direct that, unless Bellcore establishes its neutrality under the applicable revenue and “undue influence” criteria, ownership of DSMI be divested to an entity that is not aligned with any segment of the telecommunications industry. Moreover, although DSMI’s systems and management work well and should remain,

DSMI cannot function in the post-1996 Act environment while still operating pursuant to a contract with the RBOCs; DSMI's contractual relationship with the current, RBOC-controlled SMT must be remedied. Second, the Commission should (a) investigate the ownership, cost and contractual relationships among the RBOCs, SBC and the toll-free database, and (b) direct that the SMS/800 and the SMT be transferred, via FCC-supervised competitive bidding, to a neutral third-party that is unaffiliated with any carrier and not aligned with any segment of the telecommunications industry. Only in this way can the Commission satisfy the requirements of Section 251(e)(1) and ensure the public interest in a robust, competitively growing toll-free services market in the United States.



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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, hereby responds to the June 11, 1998 Public Notice released by the Common Carrier Bureau (the "Bureau") seeking comment on whether the present structure of toll-free database administration is consistent with the neutrality requirements of the Telecommunications Act of 1996 (the "1996 Act").¹

INTRODUCTION

Since passage of the 1996 Act, the Commission has focused much of its numbering activities on implementation of improvements in local telephone numbering, including local number portability ("LNP"). While LNP and related local numbering issues, such as number pooling, are very important to both competition and the public interest, serious issues about long-distance telephone number administration have now remained unsettled for nearly a decade. Chief among these is the structure of the current system for administration of toll-free (formerly

¹ *Common Carrier Bureau Seeks Comment on the North American Numbering Council Recommendation that Database Services Management, Inc. Remain the Toll Free Database Administrator*, Public Notice, DA 98-1112 (Comm. Carr. Bur. rel. June 11, 1998)("Notice").

"800") numbers, including ownership and operation of the toll-free database itself. MCI strongly disagrees with the limited recommendation of the North American Numbering Council ("NANC"), and believes that the Commission must act promptly to resolve the competitive, legal and policy problems arising from the continued role of the Regional Bell Operating Companies ("RBOCs") in competitively vital toll-free database administration.

Under Section 251(e) of the 1996 Act, 47 U.S.C. § 251(e)(1), the Commission is charged with designating "one or more impartial entities to administer telecommunications numbering." The *Third Report and Order* in this proceeding concluded last October that toll-free number database administration, as structured since its inception in 1993, is "inconsistent with" the requirements of Section 251, and directed NANC to recommend "an appropriate administrator for the toll-free database."² The NANC, however, reported in March 1998 that Database Service Management, Inc. ("DSMI")—whose parent corporation, Bellcore, was recently sold by the RBOCs—should "be continued as the administrator."³ The NANC also deferred MCI's request for a broader review and investigation of the RBOCs' continued involvement in toll-free database administration. Thus, the NANC has essentially recommended that the Commission reverse its findings in the *Third Report and Order*, but without any substantive review of the actual ownership or operation of the toll-free database system beyond the narrow issue of DSMI's new corporate structure.

The fact is the issue of DSMI's neutrality is dwarfed by the impropriety of the current RBOC-dominated structure of toll-free database administration. The RBOCs, especially South-

² *Administration of the North American Numbering Plan*, CC Docket No. 92-237, *Toll-free Service Access Codes*, Third Report and Order, CC Docket No. 95-155, ¶ 109 (rel. Oct. 9, 1997) ("NANPA Selection Order")

western Bell Telephone Company ("SWBT"), are intimately involved in ownership and operation of the network database, and supporting systems, used for administration of toll-free numbers. Specifically, the RBOC-controlled SMS/800 Management Team ("SMT") owns and controls the toll-free database, sets charges for its use, contracts with DSMI for certain management functions, and delegates operation of the 800 Service Management System ("SMS/800") to SWBT. These relationships clearly contravene the command of Section 251(e) for an "impartial" administrator of, and "equitable" access to, toll-free numbers, and cannot remain under Section 271 if the RBOCs desire to satisfy the so-called "checklist" for entry into the interLATA marketplace. Equally importantly, the RBOCs' decade-long control over toll-free number administration has resulted in the governing administrative contracts never being reviewed or approved by the Commission, the imposition of clearly excessive and anticompetitive costs on interexchange carriers ("IXCs") for database services, the misuse of competitively sensitive database information by the RBOCs, the continued implementation of legacy, 1980s-era technology for one of the fastest growing telecommunications markets of the 1990s, and the ever-present risk that, as was the case several years ago, the RBOCs' administration will fall behind industry demand for toll-free numbers, requiring FCC-imposed (and inherently inequitable) toll-free number "allocation" plans.

The consequences of the RBOCs' role in the toll-free database are thus inflated costs, unaccountable administration, anticompetitive conduct and, at the very least, a plain appearance of impropriety in permitting the RBOCs to continue to control numbering resources that are essen-

³ Letter from Alan Hasselwander, NANC Chairman, to FCC (March 25, 1998).

tial to MCI and other rivals. Among other things, as indicated below the RBOCs have overcharged MCI for database services by at least \$14 million in just a three-year period, have improperly gained access to competitively sensitive IXC utilization and other toll-free number information stored in the database, and have financed the database with a lavish management style that reportedly includes off-the-books boondoggles for Board of Directors meetings in London, Hawaii and other exotic "business" locations. (See Section III(B) below.)

These unacceptable consequences demand Commission action now. In selecting a new North American Numbering Plan Administrator ("NANPA"), the Commission was acutely conscious that if and when the RBOCs are granted interLATA authority under Section 271 of the 1996 Act, the competitive significance of numbering administration will expand by another order of magnitude. Nowhere is this more significant than the toll-free market, where RBOCs have for years sought to curtail IXC expansion in order to better position themselves for eventual entry into one of the most competitively significant, and consumer friendly, portions of the long-distance market. If, as the Commission decided last Fall, the National Exchange Carrier Association ("NECA") was not qualified to serve as a neutral billing and collection agent for NANPA without significant changes to its structure, composition and management,⁴ then the current SMT and SMS/800 structure cannot survive even cursory scrutiny. And NECA's charges for NANPA billing and collection are paltry compared to the estimated \$92 million in annual industry "rev-

⁴ NANPA Selection Order at ¶¶ 82-91.

enue requirement” assessed on IXC’s by the SMT and SMS/800 for database services,⁵ making the direct economic importance of toll-free administration far more important.

In sum, toll-free number administration today is a relic of a bygone era in telecommunications that has been superseded by the new competitive paradigm of the 1996 Act. This situation cannot remain. MCI therefore urges the Commission to take immediate action to reform the structure of toll-free database administration. First, the Commission should direct that, unless Bellcore establishes its neutrality under the applicable revenue and “undue influence” criteria, ownership of DSMI be divested to an entity that is not aligned with any segment of the telecommunications industry. Moreover, although DSMI’s systems and management work well and should remain, DSMI cannot function in the post-1996 Act environment while still operating pursuant to a contract with the RBOCs; DSMI’s contractual relationship with the current, RBOC-controlled SMT must be remedied. Second, the Commission should (a) investigate the ownership, cost and contractual relationships among the RBOCs, SWBT and the toll-free database, and (b) direct that the SMS/800 and the SMT be transferred, via FCC-supervised competitive bidding, to a neutral third-party that is unaffiliated with any carrier and not aligned with any segment of the telecommunications industry. Only in this way can the Commission satisfy the requirements of Section 251(e)(1) and ensure the public interest in a robust, competitively growing toll-free services market in the United States.

⁵ SMS/800 Management Team, 800 Service Management System (SMS/800) Functions, Tariff F.C.C. No. 1, Transmittal No. 13, Description and Justification, Table 2 (filed June 5, 1998).

BACKGROUND

A. The Importance of Impartial Numbering Administration

As part of its plenary jurisdiction over use of numbering resources, the Commission is obligated to ensure that toll-free numbers are administered by impartial entities in a competitively neutral and efficient manner. Section 251 of the 1996 Act expressly requires that the Commission designate “one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”⁶ Furthermore, the Commission’s long-settled numbering policies stipulate that telecommunications numbers must be made available on an equitable basis in an efficient and timely basis to telecommunications carriers, and that number administration may not unduly favor or disfavor any particular telecommunications industry segment.⁷

The Commission has taken significant steps to meet its Section 251 obligations and to implement numbering administration changes that satisfy the Commission’s numbering policies. MCI applauds these actions and has supported the efforts of the Commission—working in concert with the NANC—to select an impartial North American Numbering Plan Administrator (“NANPA”),⁸ to transfer central office code administration functions from the RBOCs and GTE,⁹ to implement safeguards to ensure that NECA serves in an impartial manner as the billing and collection agent for the NANPA,¹⁰ and to select impartial entities to operate the Number

⁶ 47 U.S.C. § 251(e)(1).

⁷ See, e.g., 47 C.F.R. § 52.9(a).

⁸ *Administration of the North American Numbering Plan*, Third Report and Order, CC Docket No. 92-237 (rel. Oct. 9, 1997) (“NANPA Selection Order”).

⁹ *Administration of the North American Numbering Plan*, Report and Order, CC Docket No. 92-237, 11 FCC Rcd. 2588 (1995) (“NANP Order”).

¹⁰ NANPA Selection Order at ¶¶ 82-91.

Portability Administration Centers (“NPACs”) for LNP.¹¹ Against this backdrop, perhaps the largest unresolved issue of numbering administration—that is, separate from the pressing issues of number pooling and area code exhaust, “jeopardy” and relief planning—is the structure and operations of the toll-free database. Despite the recent conclusions in the Commission’s *Third Report and Order*, however, toll-free database administration remains virtually unchanged from its inception in the early 1990s.

B. Toll-Free Service Competition and the Public Interest

Toll-free services have long been a source of significant competitive importance, tremendous carrier revenue, and important benefits for telecommunications end users and the American economy. The Commission recognized the competitive significance of toll-free services in the late 1980s and began the process of moving to “800” number portability to promote competition, and equal access to numbers, within the toll-free service market.¹²

As competition has grown, so have the commercial applications for toll-free services and the overall size of the toll-free market. Following the implementation of portability by means of the 800/SMS, revenues for toll-free services have increased from over \$7 billion in 1992 to nearly \$12 billion dollars in 1996.¹³ The tremendous growth in the use of toll-free numbers from less than 2.5 million working numbers in April 1992¹⁴ to over 13 million working numbers to-

¹¹ *Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd. 12281 (1997) (“NPAC Selection Order”).

¹² *Provision of Access for 800 Service*, Notice of Proposed Rulemaking, CC Docket No. 86-10, 102 F.C.C.2d 1387 (1986).

¹³ NATA, 1993/1994 NATA Telecommunications Market Review & Forecast, at 79-82 (1994) (“NATA Market Review”); The Yankee Group, U.S. Business Long-Distance Market: Calm Before the Storm, White Paper, at 4 (1997).

¹⁴ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, *Long Distance Carrier Code Assignments*, at 79 (Oct. 1996).

day¹⁵ further demonstrates the economic and social importance of toll-free services to the public. Finally, while long distance carriers offer the vast majority of toll-free services, the services are also very significant for local carriers, paging providers, PCS companies and a variety of other types of telecommunications providers. For instance, the RBOCs today aggressively pursue the intraLATA 800 market,¹⁶ and are anxiously awaiting entry into the interLATA 800 service market.¹⁷

C. The Structure of Toll-Free Database Administration

Review of the technical components for administering toll-free numbers is necessary to evaluate the roles of the various entities that are involved with toll-free number administration. The 800 Service Management System ("SMS/800"), which is "jointly owned by the RBOCs,"¹⁸ forms the technical heart of toll-free number administration. It is an operations and administrative support system used for the creation and maintenance of toll-free call processing records, and serves as the source of toll-free number availability and reservation status information. The SMS/800 consists primarily of a database for storage of customer records and toll-free number information, and software that enables access to the system and facilitates downloading information from the database to service control points ("SCPs") in carrier networks. Responsible Orga-

¹⁵ *Toll-Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, CC No. 95-155, FCC 98-48, at 25-26 (rel. Mar. 31, 1998).

¹⁶ NATA Market Report at 81. For example, SWBT a subsidiary of SBC Communications, Inc. ("SBC"), markets MaxiMizer 800 Service that "Give[s] you all the benefits of traditional 800 service—at a fraction of the cost" < http://www.swbell.com/cgi-bin/page.exe?File=ProdOverview.html&PRODUCT_CODE_EQ=MM8>.

¹⁷ SBC emphasized in its 1997 annual report that "[p]roviding long distance service within our seven-state territory continues to be a primary objective. Through our wireless subsidiaries, we already serve 3.6 million long distance customers. . . . We will keep knocking on the long distance door until it opens." SBC Communications, Inc., 1997 Annual Report, at 4 (1998).

¹⁸ *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, CC Docket No. 93-129, Report and Order, ¶ 10 (rel. Oct. 28, 1996).

nizations ("RespOrgs")¹⁹ use the SMS/800 system to reserve toll-free numbers and to create and change customer records. The SMS/800 stores this information in its own database, and periodically downloads the information to the SCPs residing throughout the public switched network that direct toll-free traffic by providing routing information, carrier identification and other relevant information.

The entities responsible for administration of toll-free numbers have remained largely unchanged since the introduction of toll-free number portability. The SMS/800 Management Team ("SMT"), which consists of representatives from each of the RBOCs, is responsible for the overall management of the 800/SMS. It is undisputed that "[t]he SMT has final say on all matters related to the SMS/800 database."²⁰ The SMT control of the SMS/800 system stems from the fact that the BOCs were required by the Commission to design, develop and fund the SMS as a means of providing equal access for all IXC's to 800 numbers, including 800 portability, after the Bell System divestiture in 1984. The SMT owns and controls all aspects of the SMS/800 system, including bidding and holding the contracts with the SMS/800 data centers, run by SWBT, with DSMI, and with the provider of 800 "Help Desk" services (formerly Lockheed Martin IMS, now Sykes Enterprises).

As is evident from this structure, SWBT performs a crucial role in toll-free number administration. SWBT is under contract with the SMT to provide the operational support and hardware for the SMS/800 software system, and actually runs the two SMS/800 databases.

¹⁹ The Responsible Organization ("RespOrg") is the entity identified by the 800 subscriber or the subscriber's agent that assumes the duty of managing and administering the appropriate records in the SMS/800. Functions provided include data entry, record change and trouble acceptance, referral, and/or clearance. 47 C.F.R. § 52.101(b); SMS/800 Management Team, 800 Service Management System (SMS/800) Functions, SMS/800 Tariff F.C.C. No. 1, Transmittal No. 12, at 24 (filed May 16, 1997) ("SMS/800 Tariff").

SWBT provides support for software testing, operation of the SMS/800 tutorial system, and trouble handling related to SMS/800 access facilities. SWBT has performed this role since the beginning of toll-free number portability, although neither its charges, nor the terms of its contract with the SMT, have been reviewed or approved by the Commission.

The role of DSMI and the 800 Help Desk are far more confined and ministerial than that of either the SMT or the SMS/800. DSMI operates under contract to the SMT. As the RBOCs explain, "DSMI, working as a representative of the SMT, is responsible for carrying out the day-to-day management and coordination of the SMS/800 services provided to both RespOrgs and SCP Owners/Operators."²¹ DSMI is a wholly owned subsidiary of Bellcore, which is also under contract with the SMT to provide SMS/800 software support.²² In turn, Sykes Enterprises operates the SMS/800 Help Desk, formerly known as the Number Administration Service Center ("NASC"). The Help Desk is responsible for the administrative and operational support services required by RespOrgs in their use of the SMS/800 database.

There are several industry forums that develop number administration guidelines and address toll-free number administration issues. The SMS/800 Number Administration Committee ("SNAC"), under the auspices of the Alliance for Telecommunications Industry Solutions ("ATIS"), "identifies, develops, and implements the resolution of issues focused on the support of the 800/SMS."²³ The SNAC forum is open to all interested parties and meets regularly to address technical and operational issues, develop administration guidelines and develop recom-

²⁰ SMS/800 Management Team, *Introduction to Toll-free Service*, Issue 3, at 6 (June 1996).

²¹ *Id.*

²² *Id.*

²³ <<http://www.atis.org/atis/clc/obf/snac/snachom.htm>>.

mendations for improvements to the 800/SMS.²⁴ The SNAC coordinates toll-free number administration issues with the Industry Numbering Committee ("INC"), another ATIS-sponsored form, which periodically becomes involved with toll-free numbering issues, and the NANPA.

D. FCC and NANC Consideration of Toll-Free Database Neutrality

In the October 1997 *Third Report and Order*, the Commission selected Lockheed Martin IMS as the new NANPA and indicated that it would address the broader issues associated with toll-free number administration in its toll-free service docket.²⁵ As it did with the selection of the NANPA, the Commission requested that NANC make a recommendation with respect to toll-free number administration and the neutrality of DSMI, finding that "toll free number administration . . . [is] inconsistent with Section 251(e)(1) of the Act."²⁶

The NANC delegated review of this issue to the NANPA Working Group, a subcommittee that had initially developed criteria to assess the neutrality of the NANPA. As part of the review conducted by the NANPA Working Group, DSMI provided a letter claiming that it was neutral because:²⁷

- (a) DSMI purportedly has no role in "toll-free number administration," which it narrowly defined to include only "defining guidelines for the assignment and use of numbering resources;"²⁸
- (b) DSMI's owner, Bellcore, is now a subsidiary of Science Applications International Corp. ("SAIC"), and "[w]hen taken as a component of its parent company .

²⁴ *Id.*

²⁵ *NANPA Selection Order* at ¶ 109.

²⁶ Notice at 1.

²⁷ Letter from Michael Wade, President, DSMI, to Karen Mulberry and Mark Welch, Co-Chairpersons, NANPA-Working Group (Dec. 10, 1997) ("DSMI Letter").

... the percentage of SAIC's/Bellcore's/DSMI's annual revenue received from any individual telecommunications service provider is less than five percent (5%);²⁹ and

- (c) DSMI is not subject to the "undue influence" of any industry segment because "for the past fifty-six (56) months and there has never been a single concern regarding DSMI's handling of its obligations."³⁰

DSMI provided no documentation, or actual revenue data, to support these assertions, and did not even allege that Bellcore does not derive either 5% of its revenues from any individual RBOC or a majority of its revenues collectively from the RBOCs and other LECs.

The NANPA Working Group reached consensus that DSMI was neutral, without deciding whether DSMI's interpretation of the neutrality criteria was correct. MCI dissented from the NANPA Working Group's report, arguing that because it was owned by Bellcore and subject to an RBOC contract, DSMI was unfairly aligned with one industry segment. Both MCI and AT&T—the two largest toll-free service providers and the carriers making the highest contributions to the RBOCs' SMT and SMS/800 revenues—also concluded that the "entire structure" of toll-free number administration should be investigated, including the relationship between the SMT and its subcontractors, as well as the SMS/800 system architecture, performance and cost.

None of these considerations was addressed by the NANC at its February and March 1998 meetings. The NANC did not demand any additional data or documentation from

²⁸ *Id.* at 1-2.

²⁹ *Id.* at 3.

³⁰ *Id.* at 4.

DSMI—either its SMT contract(s) or actual revenue data—and concluded based on the NANPA Working Group Report that DSMI was neutral.³¹ As the NANC has advised the Commission:

The NANC has reviewed the issues and recommends that Database Service Management, Inc. (DSMI) be continued as the administrator. DSMI is a subsidiary of Bellcore, which was formerly owned by the Regional Bell Operation Companies. Bellcore, however, was recently sold to SAIC, which is not identified with a particular segment of the telecommunications industry. Based on that development, it is the opinion of NANC that DSMI is an impartial and neutral administrator.

NANC March 25, 1998 letter, at 1. MCI's request that the NANC defer decision until it had investigated the ownership, structure and operations of the SMT and the SMS/800 was rejected.

Although the NANC recognized that "[t]here remains broader issues regarding toll-free number administration to consider," consideration of these issues was deferred until a later, indeterminate time on the ground that the NANC has "more important" issue to address first.³² Since the March 1998 meeting, the NANC has not addressed toll-free number administration again and has not scheduled any investigation of the "broader issues" raised by MCI and AT&T.

DISCUSSION

I. ALL OF THE TOLL-FREE NUMBER ADMINISTRATION FUNCTIONS PERFORMED BY THE SMT, THE SMS/800 AND DSMI ARE SUBJECT TO THE NEUTRALITY REQUIREMENT OF SECTION 251(e)(1) OF THE ACT

Contrary to the narrow definition of "number administration" advanced by DSMI and the NANC's narrow view that toll-free administration can be assessed without review of the direct role of the RBOCs in database administration and operation, all of these entities and functionalities are encompassed within number administration subject to the neutrality requirement of the

³¹ NANC Meeting Minutes at 13 (Feb. 1998).

³² *Id.*

1996 Act. To meet its statutory obligations, the Commission must accordingly reach the issues that NANC declined to assess in its cursory treatment of toll-free administration.

DSMI has defined toll-free number administration to consist of “defining guidelines for the assignment and use of numbering resources, as well as definition of procedures to be used in the resolution of conflicts related to numbering issues.”³³ This definition ignores reality and serves no purpose other than to attempt to relieve DSMI of demonstrating its neutrality. Under this constrained definition, because it does not actually write assignment guidelines or develop conflict resolution procedures, which are done by the INC and NANC, not even NANPA would be considered to “administer” number resources. That simply cannot be the case.

Indeed, the Commission has repeatedly included many more functions within the meaning of number administration. The Commission has recognized that overall number administration includes four broad functions: policy making, dispute resolution, maintenance of number databases and processing applications for numbers.³⁴ Additionally, the Commission has recognized that functions associated with central office (“CO”) code administration include processing of CO code applications, assessing and maintaining CO code assignment databases and interpreting CO code guidelines.³⁵ Finally, the Commission has included within the meaning of number administration the maintenance of number portability administration centers (“NPACs”), including the operation and maintenance of the databases.³⁶ From a network and number re-

³³ DSMI Letter at 2.

³⁴ *Administration of the North American Numbering Plan*, Notice of Proposed Rulemaking, 9 FCC Rcd. 2068 (1994) at ¶ 7.

³⁵ NANP Order at ¶ 68.

³⁶ NPAC Selection Order at ¶¶ 2-5.

source standpoint, the operation of NPACs, which serve as the LNP databases, is functionally similar to the operation of the SMS/800 for toll-free number assignment.

Under the Commission's definition of number administration, the SMT, the SMS/800 (i.e., SWBT) and DSMI all clearly perform toll-free number administration functions. Collectively, these three entities control the SMS/800 system that enables assignment of toll-free numbers by RespOrgs. Each of them have critical roles that may enhance or impair the toll-free number assignment process and directly impact competition in toll-free services. For instance, SWBT runs the system that enables assignments and activation of number requests. As a result, it has the potential to delay number activation and has access to sensitive number assignment information not available to other RespOrgs. Moreover, DSMI, operating under the control of the SMT, oversees the day-to-day operations of the SMS/800 system and historically has played a significant role in advising the Commission regarding number usage and exhaust. The SMT manages the entire process and makes key decisions regarding the expansion of and enhancements to the SMS/800 system. Using this control, it has the ability to delay improvements to the system, which operates using hardware and software that is nowhere near state-of-the art, and can determine whether, and when, new toll-free area codes will be supported in this rapidly expanding commercial market. Thus, because the RBOC SMT consortium enjoys little direct competitive benefit from toll-free services, the scalability and cost of database administration will remain key areas of concern, with the potential still existing for recurrence of the disruptive "jeopardy" situations that required FCC-imposed toll-free number allocation restrictions in 1995-98.

Even if the Commission determines that these entities do not perform “number administration” functions, Section 251 still requires that the Commission ensure that impartial entities perform the functions conducted by the SMT, SWBT and DSMI. Under Section 251 and its own numbering rules, the Commission must not only ensure that impartial entities administer telecommunications numbering, but must also make toll-free numbers available on an “equitable basis” and in a manner that “facilitates entry” into telecommunications. Thus, whether one refers to the roles conducted by these entities as number administration or something else, because they have such significant roles in making toll-free numbers available, the Commission must examine the full structure of the SMT and SMS/800 system before determining whether toll-free number administration, as presently structured, is neutral, impartial and in the public interest.

II. DSMI’S OPERATIONS SHOULD REMAIN INTACT, BUT BELLCORE MUST BE REQUIRED TO DIVEST OWNERSHIP OF DSMI TO AN IMPARTIAL THIRD-PARTY IF BELLCORE CANNOT DEMONSTRATE ITS NEUTRALITY FROM ANY PARTICULAR INDUSTRY SEGMENT

The NANC’s agreement with DSMI’s analysis of toll-free number administration neutrality—namely that the only relevant criterion is whether SAIC, DSMI’s ultimate parent holding company, is impartial—reflects an improperly limited view of the requirements of Section 251(e)(1) and the Commission’s numbering policies. Two elements of DSMI’s relationship with the RBOCs clearly demonstrate that it does not meet the applicable standards for “impartial” numbering administration. First, because Bellcore provides the SMS/800 software, DSMI is subject to “undue influence” by its owner, which has a vested interest in toll-free number administration since changes in the system directly affect Bellcore’s revenues associated with software development and modification. Second, because DSMI is under contract to the RBOC-

controlled SMT, DSMI in fact operates as a “representative” of the RBOCs,³⁷ and thus is affiliated with “one particular segment of the telecommunications industry.” Consequently, the potential exists for DSMI to make decisions that would benefit the RBOCs, who also have a vested interest in the outcome of toll-free numbering administration decisions.

The NANC’s view that Bellcore’s sale to SAIC removes any concern about neutrality was based on an incomplete analysis of the issue. Contrary to the NANC’s conclusion, the Commission has always been concerned about the entity actually making numbering decisions, and its affiliates, not merely the composition or revenues of indirect holding companies like SAIC. DSMI receives all of its revenues from the SMT, and Bellcore, in turn, still earns a majority of its revenues from the RBOCs and other LECs. Thus, DSMI’s assertion that SAIC—the parent company of its parent company—does not earn more than 5% of its revenues from any telecommunications carrier is immaterial. Under such an approach, for example, if General Motors purchased SBC or any other RBOC, SBC (or any other acquired RBOC) would then be a “neutral” number administrator, eligible to serve as the NANPA without any further inquiry or safeguards. This nonsensical conclusion conflicts not only with common sense, but also with the Commission’s past practice, for instance in examining the neutrality of Lockheed Martin’s other affiliated subsidiaries in determining Lockheed’s neutrality for NANPA selection purposes³⁸ and in requiring neutrality safeguards, including an independent subsidiary and Board of Directors, before NECA was eligible to serve as the NANP billing and collection administrator.³⁹

³⁷ SMS/800 Management Team, *Introduction to Toll-Free Service*, Issue 3, at 6 (June 1996).

³⁸ NANPA Selection Order at ¶¶ 70-81.

³⁹ *Id.*

MCI emphasizes that the day-to-day operations of DSMI are working well, and that the Commission need not consider changing either the management or operations of DSMI itself. On the other hand, DSMI is in fact aligned with the RBOCs and operates as their contract agent, creating a structural environment that violates the Commission's rules and which, at the very least, creates a clear appearance of partiality. As the Commission has emphasized, "it would be very difficult, if not impossible for a NANP Administrator closely associated with a particular segment of the telecommunications industry to be impartial. Even if a NANP Administrator aligned with a particular industry segment was impartial, there would still likely be the perception and accusations that it was not."⁴⁰ For these reasons, DSMI cannot continue its role in toll-free administration unless and until (a) Bellcore establishes that, as DSMI's parent, it is not "aligned with" any particular segment of the telecommunications industry, *i.e.*, that it does not receive more than 5% of its revenues from any carrier or a majority of its revenues from any segment of the industry, and (b) the Commission takes affirmative steps to remedy DSMI's contract with the RBOC-controlled SMT to ensure equitable treatment of all carriers, from all industry segments.

III. TOLL-FREE NUMBER ADMINISTRATION BY THE RBOC-CONTROLLED SMT AND SWBT VIOLATES SECTION 251(e) OF THE 1996 ACT AND THE COMMISSION'S RULES

The issue of DSMI's neutrality is dwarfed by the impropriety of the structure of the underlying SMT and SMS/800 database, which is a vestige of the pre-1996 Act industry that is no longer permissible in an era of cross-market entry and robust competitive alternatives. The

⁴⁰ NANP Order at ¶ 57.

Commission must accordingly take up the issues, advanced by MCI and AT&T but "deferred" by the NANC, related to whether the RBOC involvement in toll-free number administration complies with Section 251(e) of the Act and the Commission's numbering policies. MCI believes that, even in light of the limited evidence now publicly available, the only responsible conclusion possible is that the RBOCs, and SWBT, must be removed immediately from their central role in administration and operation of the toll-free database system.

A. The RBOC Domination of Toll-Free Numbering Violates the 1966 Act

Under no circumstances can the RBOC-controlled SMT and SWBT satisfy the Section 251 requirement that impartial entities administer numbering resources. There is no doubt that the SMT, which is composed of the RBOCs, and SWBT, the largest RBOC which soon may control over 35% of the local markets in the United States, are NOT impartial entities. Each of the RBOCs is a direct competitor with many of the users of the SMS/800 system. Indeed, as detailed above, SBC, as well as the other RBOCs, all have their own toll-free service offerings and are actively seeking entry into long distance markets. Upon receiving Section 271 regulatory approval to provide interLATA services, there is no doubt that RBOCs will quickly seek to offer interLATA toll-free services and further jeopardize the integrity and fairness of toll-free number administration.

As in the case of Central Office ("CO") code administration, the Commission should transfer responsibilities for toll-free number administration from the RBOC-controlled SMT and SWBT to neutral third parties. The role that the SMT and SWBT perform with respect to toll-free numbers is very similar to their former roles administering CO codes. In deciding to transfer CO code administration to a neutral party the Commission reasoned that:

centralizing CO code assignment in a third party not affiliated with any segment of the industry will help to ensure that all those requiring them have equal, non-discriminatory access to CO codes. The current system of LEC assignment of CO codes is potentially incompatible with the principles we espoused in the *Ameritech Order* that numbering administration should be non-discriminatory, pro-competitive and should encourage the introduction of new technologies, which often will be used to compete with the LEC for market share. CO codes are essential to other new service providers, including cellular carriers and paging providers. The linkage between CO code availability and the growth of competition to the LECs' core business increases the potential for and perception of unfair treatment in CO code allocation. An entity requesting CO codes is required to divulge competitively sensitive information to the CO code administrator. Having a CO code administrator unaffiliated with the dominant LEC would assure parties requesting codes that such information could not be used in an anticompetitive manner.

NANP Order at ¶ 73.

All of these reasons for the Commission's transfer of CO code administration apply equally well to transferring toll-free number administration to neutral third parties. In fact, the phrase "CO Code" may simply be replaced by "toll-free codes" and the reasoning fully supports the need for impartial entities to administer toll-free numbers. Toll-free number administration is essential for new entry in the telecommunications industry. The RBOCs' central role in the SMT and the SMS/800 increase the potential for a perception of unfair treatment. RespOrgs requesting new toll-free numbers are required to divulge competitively sensitive information to the RBOCs, which is stored in the database they control. Only "having a [toll-free] administrator unaffiliated with the [RBOCs] would assure parties requesting [toll-free numbers] that such information could not be used in an anticompetitive manner." *Id.*

B. The RBOC Role in Toll-Free Numbering is Anticompetitive

Permitting RBOCs to continue to administer toll-free numbers plainly violates the Commission's fundamental numbering policy that number administration must be competitively neu-